

Second, as the party who issued the Subpoena for Swecker's bank records, it is befuddling that Plaintiff notes that Swecker did not attempt to meet and confer regarding Plaintiff's "small non-substantive change to a pending subpoena." As the initiators of the Subpoena to Wells Fargo, Plaintiff could not be bothered to share the initial or subsequent Subpoena with Swecker; each time, Swecker only learned of their existence through a third person. If Plaintiff was truly motivated by good faith, efficiency, and expediency, at a minimum, he would have notified Swecker of the subpoenas; he did not. In fact, Plaintiff's disregard for efficiency and expediency is predictable and clear: Plaintiff waited until the deadline for Wells Fargo's production in response to the Subpoena to file their Opposition. Rather than initiate a discussion with Swecker about the records sought through the Subpoena, Plaintiff has wasted the Court's time with this ongoing motion's practice.

In an attempt to resolve this ongoing Subpoena dispute, on or about May 17, 2024, Swecker initiated a meet and confer conference with Plaintiff's counsel to address the Opposition. During this conference, counsel for Swecker was of the position and so stated to Plaintiff's counsel, that the Subpoena had no relevance to the remaining counts in the complaint. However, counsel for Swecker stated that if the Court determined that the records subpoenaed by Plaintiff's counsel were relevant, Swecker's counsel discussed a willingness to discuss and resolve concerns related to the substantive and temporal scope of the Subpoena without court intervention. Counsel for Plaintiff expressed a willingness to engage in this discourse and consider Swecker's concerns. As expressed in Swecker's Motion to Quash in response to the initial and subsequent subpoenas to Wells Fargo, Swecker

reiterated the following arguments: 1) The information sought in the Subpoena is not relevant to the remaining counts of Plaintiff's complaint; 2) The temporal scope of the Subpoena should be limited to reflect the time period which Magistrate Judge Joe Webster ruled relevant in his July 2023; and 3) The substantive scope of responsive bank records should be limited to payments from Defendants to Swecker for his legal services and for the purpose of paying vendors for work completed pursuant to the parameters of Swecker's legal representation. Counsel for Swecker shared that Swecker would freely and willingly produce bank records within the aforementioned parameters if the Court found the bank subpoena requested records relevant to the remaining counts in the complaint. During the meet and confer, consistent with facts represented in various pleadings and Swecker's deposition, Swecker's counsel emphasized that at all relevant times, the scope of Swecker's engagement was strictly limited to that of legal representation; at no point was he engaged as a consultant or in a similar capacity. Thus, efforts by Plaintiff to secure records for payments outside the scope of Swecker's engagement as an attorney described above are unfounded. After Plaintiff's counsel represented that Plaintiff was not interested in payments made to Swecker as counsel to defendants, Swecker's counsel in follow-up email correspondence with Plaintiff's counsel offered to have the bank search for payments made by Swecker to any entity or person to whom Plaintiff's counsel believed Swecker made payments out of his business account and directly related to this matter.

Despite all efforts by Plaintiff's counsel and Swecker's counsel to reach a resolution regarding the scope of the Subpoena, these efforts were ultimately unsuccessful.

CONCLUSION

Plaintiff's Opposition to Swecker's Motion is unreasonable. Swecker previously and currently is of the position that the subpoena for his bank records is not relevant to the remaining counts of the complaint. However, even if this Court was to find the subpoena somehow relevant to the remaining counts in the complaint, Swecker's arguments for limiting the substantive and temporal scope of the Subpoena are well-founded. Thus, Swecker respectfully renews his request that this Court quash the second bank subpoena or, at minimum, limit the scope of the Subpoena as described.

Respectfully submitted this 22nd day of May, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of May, 2024, I caused true and correct copies of the foregoing to be served via email on the following:

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WORD COUNT CERTIFICATION

Pursuant to Local Rule 7.3(d)(1), I hereby certify that this brief does not exceed the 3,125-word limitation for reply briefs, according to the word count feature of the word processing system used to prepare the brief.

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